

1/26/22

JULIA C. DUDLEY, CLERK
BY: s/ ELLA SURBER
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
(Abingdon Division)**

**CHRISTOPHER HILL
1003 S. Ninth Street
Princeton, WV 24740**

Plaintiff,

v.

Case No.: 1:22CV5

**KHAMIDILLO ABDUMUXTOROV
1509 Quail Lane
Kill Devil Hills, NC 27948**

and

**ASIRDIN BOZOROV
1025 Camden Lane
Unit D
Bridgeview, IL 60455**

and

**GLOBAL TRANSPORT, LLC
164 Logan Lane
Harrisonburg, VA 22801**

and

**GLOBAL TRANSPORTATION, LLC
820 S. Monaco Parkway
Unit 213
Denver, CO 80224**

Defendants.

NOTICE OF AND PETITION FOR REMOVAL

Petitioners/Defendants, KHAMIDILLO ABDUMUXTOROV and ASIRDIN
BOZOROV, (hereinafter, "Defendants"), by counsel, and pursuant to 28 U.S.C. §1441 *et. seq.*,

hereby file this Notice of and Petition for Removal of this action from the Circuit Court for Smyth County, Virginia, in which it is now pending, to the United States District Court for the Western District of Virginia, and in support thereof, respectfully aver as follows:

1. Defendants have been named as the defendants in a suit filed in the Circuit Court for Smyth County, Virginia, Case No.: CL21000116-00. Suit was initially filed on January 27, 2021. Plaintiff elected to serve Defendant Abdumuxtorov via the Commissioner of the Department of Motor Vehicles on or about January 6, 2022, and Defendant Bosorov via the Secretary of the Commonwealth on or about January 8, 2022.

2. Defendants timely filed their responsive pleadings with the Circuit Court for Smyth County on January 26, 2022.

3. The above-entitled action is one in which this Court has original jurisdiction pursuant to Title 28 U.S.C. §1332. Defendants seek to remove this action to this Court under Title 28 U.S.C. §1441(a).

4. Copies of the Complaint and of Defendants' respective responsive pleadings as filed in the Circuit Court for Smyth County, Virginia are attached as **Exhibit 1** and **Exhibit 2**, respectively.

5. The above-entitled matter is a civil action in which the Plaintiff alleges negligence and resulting injuries and damages in connection with a motor vehicle accident.

6. Defendant is entitled to removal because there is complete diversity of citizenship between Plaintiff and Defendants and the amount in controversy exceeds \$75,000.

7. Plaintiff's Complaint seeks damages of \$5,000,000.

8. Plaintiff is a citizen of the State of West Virginia.

9. Defendant Khamidillo Abdumuxtorov is a citizen of the State of North Carolina.

10. Defendant Asirdin Bozorov is a citizen of the State of Illinois.

11. Global Transportation, LLC is a business entity organized and existing under the laws of the State of Colorado with its headquarters located in the State of Colorado.¹ The limited liability company consists of one member, an individual/natural person, who is a citizen of the State of Colorado.

12. Global Transport, LLC was a business entity organized and existing under the laws of the Commonwealth in Virginia with its headquarters located in the Commonwealth of Virginia.²

13. Global Transport, LLC is an improper and incorrectly named party to this case, whose citizenship should be disregarded for removal purposes.

14. While 28 U.S.C. § 1441(b)(2) (the so-called forum-defendant rule or home-state rule) provides that a suit “...removable...on the basis of...[diversity of citizenship] may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought,” the doctrine of fraudulent joinder allows a federal court to “disregard, for jurisdictional purposes, the citizenship of certain nondiverse defendants, assume jurisdiction over a case, dismiss the nondiverse defendants, and thereby retain jurisdiction.” *Mayes v. Rapoport*, 198 F.3d 457, 461 (4th Cir.1991); *see also In re Ethicon, Inc. Pelvic Repair Sys. Prod. Liab. Litig.*, No. 2:13-CV-26024, 2013 WL 6710345, at *2 (S.D.W. Va. Dec. 19, 2013) (stating that the fraudulent joinder analysis is the same whether the issue is diversity of citizenship or the home state defendant rule).

¹ Global Transportation, LLC consents to the removal of this action.

² Global Transport, LLC has not entered an appearance in the case, as it is an improperly named and fraudulently joined party. It nonetheless has advised that it consents to removal of this action.

15. A defendant alleging fraudulent joinder must make one of two showings: (i) “[t]hat there is no possibility that the plaintiff would be able to establish a cause of action against the in-state defendant in state court”, or (ii) “[t]hat there has been outright fraud in the plaintiff’s pleading of jurisdictional facts.” *Marshall v. Manville Sales Corp.*, 6 F.3d 229, 232 (4th Cir.1993).

16. This action is removable because Global Transport, LLC is not properly joined as a defendant.

17. Plaintiff named as Defendants two (2) limited liability companies with very similar sounding names: Global Transportationion, LLC (organized and existing under the laws of Colorado) and Global Transport, LLC (organized and existing under the laws of Virginia).

18. Upon information and belief, Plaintiff named Global Transport, LLC as a defendant solely to defeat diversity.

19. While the Police Crash Report for the motor vehicle accident underlying the Complaint abbreviates the name of “Global Transportation, LLC”, to “Global Transport, LLC”, it correctly identifies Global Transportation, LLC’s USDOT Number and its address in Colorado. *See Exhibit 3*. Therefore, it was clear from the outset that the motor carrier identified as involved in the collision was Global Transportation, LLC (a Colorado limited liability company) and not Global Transport, LLC (a Virginia limited liability company).

20. Further Defendant Global Transportation, LLC admitted in its responsive pleading that Defendant Abdumuxtorov was a leased driver for the company.

21. Although Plaintiff apparently served Global Transport, LLC, counsel for Plaintiff has, upon information and belief, (1) admitted to a representative for Global Transport, LLC that he is aware Global Transport, LLC was not involved in the subject accident; and (2) granted Global Transport, LLC a series of extensions such that they have not yet been required to engage counsel or file a responsive pleading.

22. It therefore is apparent that there is no possibility that Plaintiff could establish a cause of action against Global Transport, LLC; that they were improperly joined as a defendant in this case; and that this Court should disregard their inclusion for purposes of diversity.

23. Because complete diversity exists between the parties and the amount in controversy is satisfied, this Court has jurisdiction and Defendants are entitled to removal.

WHEREFORE, Petitioners/Defendants, KHAMIDILLO ABDUMUXTOROV, and ASIRDIN BOZOROV respectfully request that the above-entitled action be removed from the Circuit Court for Smyth County, Virginia to the United States District Court for the Western District of Virginia.

Respectfully submitted this 26th day of January, 2022.

KHAMIDILLO ABDUMUXTOROV and
ASIRDIN BOZOROV

By Counsel

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2022, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which (if counsel has registered with CM/ECF) will then send a notification of such filing (NEF) to the following:

Mark T. Hurt, Esq.
mail@markhurtlawfirm.com
THE LAW OFFICES OF MARK T. HURT
159 West Main Street
Abingdon, VA 24210
Telephone: (276) 623-0808
Facsimile: (276) 623-0212
Counsel for Plaintiff

I further certify that on this 26th day of January, 2022, I will mail, via U.S. mail, postage pre-paid, a copy of the foregoing to the following:

Global Transport LLC
c/o Yosviel Gonzalez Herrera
164 Logan Lane
Harrisonburg, VA 22801

/s/ _____
Lindsey A. Lewis